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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re:	Bankruptcy Case No. 16-24818
CS MINING, LLC,	Chapter 11
Debtor.	Honorable William T. Thurman

**EMPIRE ADVISORS, LLC’S OPPOSITION, AS TO CLAIM NO. 20015, TO
DEBTOR’S SECOND OMNIBUS (SUBSTANTIVE) OBJECTION TO
CERTAIN (A) OVERSTATED, (B) MISCLASSIFIED, (C) MISCLASSIFIED
AND OVERSTATED, AND (D) NO LIABILITY CLAIMS**

Empire Advisors, LLC (“Empire Advisors”), hereby responds to the Second Omnibus (Substantive) Objection to Certain (A) Overstated, (B) Misclassified, (C) Misclassified and Overstated, and (D) No Liability Claims filed March 15, 2018, dkt. no. 1235 (the “Substantive Claim Objection”) filed by CS Mining, LLC (the “Debtor”), as to Claim No. 20015, filed by Empire Advisors, in the amount of \$683,333.33 (the “Empire Advisors Claim”), which is one of the claims objected to by the Substantive Claim Objection. Empire Advisors respectfully states as follows:

FACTUAL BACKGROUND

1. Empire Advisors timely filed the Empire Advisors Claim, on February 16, 2017, at 1:22 p.m. The Empire Advisors Claim is based on the letter agreement dated October 31, 2011, between the Debtor, Empire Advisors, and Clarity Management (the “Letter Agreement”). A copy of the Letter Agreement is attached to the declaration of David J. Richards dated April 17, 2018 (the “Richards Decl.”), as Exhibit 1.

2. The Substantive Claim Objection asserts that the Empire Advisors Claim is “overstated” based upon a “careful review of the Debtor’s books and records.” Substantive Claim Objection at ¶¶ 16, 17. However, as is more fully explained below, the Empire Advisors Claim is based on the Letter Agreement with the Debtor and is fully supported by the Debtor’s own books and records.

3. The Letter Agreement provides for Empire Advisors or its designee to be paid a “quarterly management and monitoring fee” of \$50,000 for “Services” under the Letter Agreement. Among the Services to be provided under the Letter Agreement is service is on the Debtor’s Board of Managers (the “Board”). David J. Richards was designated as the representative of Empire Advisors who served on the Board. Mr. Richards consistently acted in this role, attending board meetings and working diligently to help make the Debtor successful in its business through pursuing financing, addressing business issues, and seeking to resolve legal issues faced by the Debtor. Prior to 2013, the Debtor paid the quarterly management fees as agreed. As noted in the Empire Advisors Claim, Empire Advisors was not paid the quarterly fees to which it was entitled under the Letter Agreement of \$50,000 per quarter from the first quarter of 2013 through May 2016, the month before the involuntary chapter 11 petition was

filed against the Debtor, for a total of \$683,333.33 (\$50,000 per quarter or \$16,666.67 per month, as set forth in an attachment to the Empire Advisors Claim. Richards Decl. at ¶ 6; Exhibit 2 to the Richards Decl.).

4. In 2013 and 2014, the Debtor accrued (but did not pay at least the portions attributable to Empire Advisors) \$800,000 and 650,000, respectively, for management fees, which included \$200,000 per year for Empire Advisors. Richards Decl. at ¶ 7; *see*, relevant portions of audited financial statements for 2013 and 2014 attached as Exhibit 3 to the Richards Decl. In 2015 and 2016, the Debtor budgeted and accounted for \$500,000 in Board management fees on an annual basis, which also included the \$200,000 management fee to Empire Advisors. Attached to the Richards Decl. at Exhibits 4 and 5 are the Debtor's final draft budget for 2016 and the operating statement for 2015. Each lists \$41,667 per month for "Other Expense," for a total of \$500,000. This consisted of annual management fees for members of the Board, with \$200,000 allotted to Empire Advisors, \$200,000 allotted to Clarity Management, and \$100,000 allotted to DXS Capital (U.S.) Limited, with whom the Debtor had a similar letter agreement. Richards Decl. at ¶ 8, 9; Exhibits 4 and 5 to the Richards Decl.

5. Empire Advisors filed a motion for temporary allowance of the Empire Advisors Claim for voting purposes on the Debtor's plan of liquidation (dkt. no. 1243). After reviewing the motion, the Debtor stipulated to the temporary allowance of the Empire Advisors Claim in the amount in which it was filed for purposes of voting and the Court approved the stipulation by Order. Dkt. no. 1280.

RELIEF REQUESTED

6. By this Opposition, Empire Advisers seeks entry of an Order denying the Substantive Claim Objection as to the Empire Advisers Claim and allowance of the Empire Advisers Claim in the amount of \$683,333.33.

BASIS FOR RELIEF

7. Section 502(b) provides for the Court's allowance of claims against a debtor, after "notice and a hearing." The Empire Advisers Claim was deemed allowed until the Debtor, purportedly relying on a "careful review of the Debtor's books and records," asserted in the Substantive Claim Objection that the Empire Advisers Claim was "overstated." Substantive Claim Objection at ¶ 17.

8. The Empire Advisers Claim is *prima facie* evidence of the validity of the claim. Attached to the Empire Advisers Claim are copies of the Letter Agreement and a schedule of payments owed to Empire Advisers required by the Letter Agreement that have not been paid. The Empire Advisers Claim is signed by David J. Richards, President and Managing Partner of Empire Advisers. Empire Advisers has submitted further proof with this Opposition. The Debtor has offered no evidence to rebut the Empire Advisers Claim other than make a generic objection based on a purported careful review of its books and records.

9. Empire Advisers recognizes that this claim is for prepetition services rendered under the Letter Agreement and does not include interest or costs.

10. The Empire Advisers Claim should be allowed and the Debtor's Substantive Claim Objection to it should be denied.

WHEREFORE, Empire Advisors respectfully requests that the Court allow the Empire Advisors Claim in the amount of \$683,333.33 and deny the Debtor's objection thereto, and grant such other relief as the Court deems equitable.

DATED this 18th day of April, 2018.

DURHAM JONES & PINEGAR, P.C.

By: /s/ Kenneth L. Cannon II

Kenneth L. Cannon II

Penrod W. Keith

Counsel for Empire Advisors, LLC

CERTIFICATE OF SERVICE- BY NOTICE OF ELECTRONIC FILING (CM/ECF)

I hereby certify that on April 18, 2018, I electronically filed the foregoing EMPIRE ADVISORS, LLC'S OPPOSITION, AS TO CLAIM NO. 20015, TO DEBTOR'S SECOND OMNIBUS (SUBSTANTIVE) OBJECTION TO CERTAIN (A) OVERSTATED, (B) MISCLASSIFIED, (C) MISCLASSIFIED AND OVERSTATED, AND (D) NO LIABILITY CLAIMS with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users.

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